

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA

v.

LARRY BLACKBURN,

Defendant.

)
)
) Case No. 1:03CR00114-002
)

) **OPINION**
)

) By: James P. Jones
) United States District Judge
)

*Jennifer R. Bockhorst, Assistant United States Attorney, Abingdon, Virginia,
for United States; Larry Blackburn, Pro Se Defendant.*

The defendant, Larry Blackburn, has filed a motion pursuant to 28 U.S.C. § 2255. I find that the United States' Motion to Dismiss must be granted.

The defendant was sentenced by this court on November 30, 2004, after pleading guilty to conspiring to distribute controlled substances, in violation of 21 U.S.C. § 841(a)(1) (Count One), possessing a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c) (Count Seven), and possession of a firearm while being a user of a controlled substance and having been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1), (2) & 924(e) (Count Ten). He was sentenced to 248 months imprisonment, consisting of 188 months on Counts One and Ten to be served concurrently and 60 months on Count Seven to be served consecutively to the other terms. An appeal was noted but it

was dismissed on motion of the government. *United States v. Blackburn*, No. 04-5033 (4th Cir. June 23, 2005), ECF No. 152.

On June 23, 2016, Blackburn filed a motion pursuant to 28 U.S.C. § 2255, contending that his sentences under Counts Seven and Ten were invalid under the holding by the Supreme Court in *Johnson v. United States*, 135 S. Ct. 2551.¹ The United States has filed a Motion to Dismiss, asserting that Blackburn's § 2255 motion should be dismissed because (1) the *Johnson* holding cannot apply to his § 924(c) sentence or his sentence under § 924(e), because the predicate offenses did not involve crimes of violence, but rather drug trafficking offenses; and (2) his claims are barred by the one-year statute of limitations contained in 28 U.S.C. § 2255(f)(1).

I agree that Blackburn's claims do not fall within the holding of *Johnson* and are barred by the statute of limitations. Accordingly, the United States' Motion to Dismiss will be granted and the § 2255 motion will be dismissed.

A separate final order will be entered forthwith.

DATED: June 20, 2017

/s/ James P. Jones
United States District Judge

¹ The motion was filed in this court on June 27, 2016, but the Certificate of Service signed by Blackburn recites that it was mailed on June 23. Mot. 18, ECF No. 162.